UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.356
19 November 1998

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 356th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 17 November 1998, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Hungary

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.356/Add.1.

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GE.98-19665 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Hungary (CAT/C/34/Add.10; HRI/CORE/1/Add.11)

1. At the invitation of the Chairman, Mr. Náray, Mr. Vokó, Mr. Mohi, Mr. Szabó and Mr. Lakatos (Hungary) took places at the Committee table.

2. The CHAIRMAN invited the delegation to introduce Hungary's third periodic report (CAT/C/34/Add.10).

3. Mr. NÁRAY (Hungary) said that Hungary had ratified the Convention in the first year of its entry into force and had made the declarations provided for under articles 21 and 22. Its second periodic report (CAT/C/17/Add.8) had concentrated on the subject of the establishment of pluralist political institutions, a functioning democracy and the rule of law. The third periodic report described new institutions such as the parliamentary Ombudsman system and reviewed the authorities' approach to implementation of the Convention. A major effort had been made to act on the Committee's conclusions and recommendations at the end of the previous dialogue. For example, high priority had been given to training law enforcement personnel, informing detainees systematically about their rights, and ensuring consistent and regular supervision of the activities of law enforcement institutions. In addition, Hungary had amended article 228 of the Criminal Code, increasing the maximum sentence for torture from three to eight years. With regard to the Committee's statement that a clear law was necessary to define the rights of minorities, he drew attention to Act No. LXXVII of 1993, on the Rights of National and Ethnic Minorities, and to the amended chapter V of the Constitution, concerning the Ombudsman for the protection of the rights of national and ethnic minorities.

4. Hungary took a keen interest in the proceedings of the Working Group on the draft Optional Protocol to the Convention. It had also strongly supported the establishment of the International Criminal Tribunals for the former Yugoslavia and for Rwanda and of a permanent International Criminal Court.

5. In view of the substantial increase in crime in recent years, the new Hungarian Government, which had taken office after the 1998 parliamentary elections, was paying special attention to public security and it attached considerable importance to international cooperation in fighting organized crime. The tragic events in neighbouring regions and mass international migration had confronted the authorities with unprecedented problems. The Government intended to promote the active involvement of Hungarian law enforcement agencies in the work of Interpol and to improve the flow of information between the police, border guards, the National Security Agency, the customs and finance police and the Office of the Public Prosecutor.

6. Hungary's eventual accession to the European Union was expected to strengthen its institutional framework, inter alia in areas of relevance to the implementation of the Convention. The Government had earmarked supplementary financial resources for the development of the judiciary and law

enforcement agencies. A sum of 2,000 million forints had been appropriated for the construction and renovation of penitentiaries. Police officers were to receive a pay rise of 20 per cent over the next twelve months and courts of first instance were to be reinforced in order to accelerate criminal and civil proceedings.

7. Proposed amendments to the Criminal Code were currently before Parliament and would probably result in more severe penalties for offences covered by the Convention. An amendment to the Code of Criminal Procedure would allow defence lawyers to be present from the time of arrest. The 1998 Act on Criminal Procedure, which would enter into force on 1 January 2000, established a more clear-cut distinction between the functions of the police, public prosecutors and the courts. The role of judges in the defence of human rights would be enhanced, further guarantees would be introduced for pre-trial detention and the institution of bail would presumably lead to a decline in the number of pre-trial detainees. The rights and duties of defendants had also been more clearly specified.

8. The law enforcement authorities were under heavy pressure and were sometimes subject to physical intimidation. Although the public found that the authorities' reaction to crime tended to be hesitant and timid, a small number of cases of police overreaction had been reported. All such cases had been duly investigated.

9. Mr. MAVROMMATIS (Country Rapporteur) said he had formed the impression from the series of Hungarian reports, the Committee's conclusions and recommendations and the material provided by non-governmental organizations (NGOs) that Hungary was committed to the implementation of the Convention, had created the necessary infrastructure for the protection of human rights and had the political will to make the resulting institutions work. It had acted on the Committee's recommendations, vindicating the purpose of the ongoing dialogue.

10. The statistics and the information on the legislative and administrative framework within which human rights were protected in the core document (HRI/CORE/1/Add.11) needed to be updated.

11. The Committee welcomed information from local NGOs and he was pleased to note that the authorities were cooperating with the Hungarian Helsinki Committee and had acted on some of its recommendations. Other positive factors were the incorporation of the Convention in domestic legislation, the establishment of the Ombudsman system, the 1998 Act on Criminal Procedure and the increase in the maximum penalty for the crime of torture.

12. According to the report, the Convention had the legal status of a sui generis law. What place did it occupy in the hierarchy of laws and was it possible to introduce legislation which, under the classical municipal rules of interpretation, could supersede the Convention? It was essential that the Convention should rank above municipal law.

13. Were the decisions of the Ombudsman binding and how were they implemented? What machinery existed to implement the Committee's decisions under the article 22 procedure and the Views of the Human Rights Committee?

When complaints of violations of the Convention were investigated by the Office of the Public Prosecutor, did the Office employ the regular police force? Was a legally qualified counsel appointed to head the investigation?

14. It would be interesting to hear more about Hungary's follow-up to the recommendations of the European Committee for the Prevention of Torture (CPT), particularly regarding prison conditions, which might constitute a breach of article 16 of the Convention unless they were improved.

15. Referring to paragraph 30 of the report, he expressed concern at the statement that a soldier or policeman was not punishable for carrying out an order unless he was aware that by doing so he would be committing an offence. Plainly, a person who was ignorant of what constituted torture or ill-treatment should not be serving as a soldier or policeman. Moreover, "awareness" was a subjective concept and difficult to prove.

16. With reference to article 3 of the Convention, why had Hungary placed a geographical limitation on ratifying the 1951 Convention relating to the Status of Refugees? He strongly urged the authorities to withdraw the restriction, since it could violate a number of treaties by according preferential treatment that amounted to discrimination. Could the delegation confirm that procedural arrangements for implementing article 3 had been in place since 1 March 1998?

17. He would also like to know how long an alien could be held in custody while his status was being considered. Was there a maximum period after which he could be released even if the inquiries had not been completed? What was the average length of an inquiry? Again, could Hungary extradite its own citizens? If not, the assumption of jurisdiction by Hungary itself was important. Had any such cases arisen? Could extradition or cooperation in judicial proceedings be made conditional on, for example, non-imposition of the death penalty or non-participation in chain gangs?

18. While he accepted the CPT's conclusion that there was no State-condoned torture or ill-treatment in Hungary, there had been reports of individual breaches of article 16 of the Convention, which dealt with cruel, inhuman or degrading treatment or punishment. A number of preventive measures such as immediate access for arrested persons to counsel, doctors and relatives might therefore be necessary. He was specifically interested in information regarding Roma detainees.

19. Mr. YU Mengjia, (Alternate Rapporteur) commended the Hungarian report and the delegation's introduction and endorsed the Country Rapporteur's remarks and queries.

20. Hungary was a country in transition, grappling both with material constraints and with problems of mass migration due to recent events in neighbouring countries. It was nonetheless making a real effort to comply with the Convention. Much had been done to promote awareness of human rights norms and standards. He would appreciate additional information on the training of law enforcement personnel in handling minority and immigrant issues. There had been allegations of excessive use of force by the police

against detainees, especially members of the Roma minority and immigrants. The European Roma Rights Centre alleged that police officers had ill-treated and injured Roma individuals in about a dozen cases.

21. With reference to article 12 of the Convention, he noted that there was a high rate of termination of criminal investigations in Hungary. What procedure was followed in such cases? Was there a supervisory mechanism to prevent underhand dealings or corruption?

22. A high proportion of asylum-seekers, including women and children, were reportedly placed in detention. What action was being taken to improve the situation? In addition, according to paragraph 59 of the report, article 55 of the Constitution stipulated that no one could be deprived of his liberty, except on such grounds and in accordance with such procedure as were determined by law. 'It was a rather sweeping provision and he asked the delegation to elaborate on its import.

23. Lastly, it appeared from paragraph 67 of the report that there had been a sharp increase in criminal proceedings against "official persons". What explanation could the delegation offer for that trend?

24. Mr. SØRENSEN said that, according to information the Committee had received, as of 10 November, there were 1,536 asylum-seekers in Hungary. Such persons were held in centres in military areas, had no outdoor exercise, no rooms for group activities and no sports facilities. Moreover, children received no schooling, despite the requirements under the Convention on the Rights of the Child. Owing to lack of space, women were sometimes housed in the same rooms as men. Could the delegation tell the Committee whether those reports were correct and, if so, what was being done to remedy the situation? The asylum-seekers had not committed any crime.

25. In connection with article 10, he would like information on how prison officers and medical personnel were trained. As to article 14, the first step towards rehabilitating the victims of torture was to acknowledge that they existed. One way would be to make a donation to the United Nations Voluntary Fund for Victims of Torture, not only because the Fund lacked resources, but also because such an act was of symbolic value for the victims. Hungary had made a small donation in 1993 and 1994, and in view of the 50th anniversary of the Universal Declaration of Human Rights, it might consider making another in 1998.

26. Mr. GONZALEZ POBLETE noted that, according to paragraph 27, detainees had the right to establish, without any restriction, direct contact with a number of human rights bodies, including the Committee against Torture. Was that done while the person was in detention, or afterwards? Could a detainee ask to make a telephone call or send a fax to the Secretary of the Committee?

27. According to paragraphs 53 and 65, both civil and military public prosecutors were required to visit all detention centres at least once a month. He wondered about the co-existence of those two authorities, both of which had judicial power. What were the limits on the jurisdiction of each one? Were some detention centres of a military character?

28. Paragraph 59, on article 14 of the Convention, referred solely to victims of unlawful arrest, not to victims of torture, unless the practice of torture was understood to be tied in with unlawful arrest. Paragraph 60 spoke of regulations for material compensation, which were laid down in the Civil Code, but there was no specific mention of the right of torture victims to demand compensation either from the State or the perpetrator, or both. He asked for clarification on that point, in particular as relating to the nature of State liability so far as torture was concerned. Finally, in respect of paragraphs 66 and 67, he would like information on the outcome of criminal proceedings in which police officers had been charged with ill-treatment of detained persons.

29. Mr. ZUPANČIČ noted that, as both a legal and a social phenomenon, torture was closely tied in with the inquisitorial legal system, which was part of the legacy of the countries of Eastern Europe. In the English-speaking world, where there was an accusatorial model of criminal procedure, torture was much less prevalent. The introduction of the exclusionary rule on evidence had constituted a great advance in legal thinking on torture. In the English-speaking world, with the jury system, it was easy to exclude evidence. The exclusionary rule had since been introduced on the European mainland.

30. According to the observations of the Hungarian Helsinki Committee of 20 August 1998, it was usually during the first interrogation that a detainee was subjected to physical or psychological abuse at the hands of the police. Experience from other countries suggested that if evidence obtained by means of such abuse was consistently excluded in later trials, then such ill-treatment tended to decline dramatically. As juries were not used in continental European systems, it was difficult to filter out such illegal evidence. How did the Hungarian legal system prevent such evidence from reaching the investigating judge?

31. The American experience showed that access to counsel immediately upon arrest was an excellent safeguard against torture. Most European systems permitted initial 24-hour incommunicado detention. It was common knowledge that courts disregarded abuses committed during that period, that all evidence gathered from the moment of arrest was used in the trial and that the case was often decided in the first 24, or possibly 48, hours. Hence the need, in the interest of justice, to allow immediate access to counsel upon arrest. Was that the practice in Hungary? Also, were arrested persons immediately informed of their rights? The Hungarian Helsinki Committee report had also provided figures on the relatively high rate of termination of cases involving accusations of police abuse. Would the delegation please comment?

32. Perhaps direct access to the Constitutional Court might be a good remedy for persons whose complaint of ill-treatment or torture had led nowhere. Lastly, he endorsed the remarks by Mr. Mavrommatis on paragraph 30. Surely the statement that "a soldier/policeman is not punishable for carrying out an order, unless he was aware that by doing so he would be committing an offence" was an error in the report. Such a defence was highly unusual, to put it mildly.

33. The CHAIRMAN said that, as he understood the delegation's introduction, amendments to the Criminal Code had abolished incommunicado detention, and arrested persons had immediate access to counsel. Could the delegation describe facilities for separating women and men in police stations and prisons? How many female prisoners were there?

34. Mr. MAVROMMATIS (Country Rapporteur) said he had received information according to which article 3 of the Convencion had been mistakenly rendered into Hungarian by "No State Party is obliged to expel, return or extradite ..." rather than "No State Party shall ...", thereby distorting the meaning. He asked the delegation to look into the matter and report back to the Committee.

The public part of the meeting rose at 11.10 a.m.